IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 247

JAMES A. TILLMAN, petitioner,

v.

IRWIN STEINGUT and HAROLD E. BLODGETT, as Receivers of the assets in New York of RUSSO-ASIATIC BANK; GUARANTY TRUST COMPANY OF NEW YORK; JESSE C. MILLARD; and UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL MEMORANDUM FOR JAMES A. TILLMAN, PETITIONER

BORRIS M. KOMAR,
Counsel for Petitioner.

Dated, N. Y., September 15, 1947.

INDEX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 247

JAMES A. TILLMAN, petitioner,

v.

IRWIN STEINGUT and HAROLD E. BLODGETT, as Receivers of the assets in New York of RUSSO-ASIATIC BANK; GUARANTY TRUST COMPANY OF NEW YORK; JESSE C. MILLARD; and UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL MEMORANDUM FOR PETITIONER

In their memorandum in opposition to the petition of James A. Tillman for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, the Government and the Guaranty Trust Company, otherwise bitter enemies in this litigation, have touchingly agreed that whether or not the petitions filed by them and the State receivers of the Russo-Asiatic Bank are granted by this Court, the petition of James A. Tillman should be denied. This touching unanimity is apparently dictated by a conviction of said respondents that they have nothing to fear on the merits from the allowance of the

appeal to the receivers and are apprehensive of the merits of the petitioner's claim, if it is reviewed in substance by this Court.

Both respondents state that "the facts" show that on the date of the Litvinov assignment (November 16, 1933), the petitioner had no outstanding attachment on the funds of Russo-Asiatic Bank in New York, as if the existence or non-existence of an attachment was a question of pure fact and not a question of law.

Petitioner's attachment is a lien created by New York statute, and its existence and non-existence is governed by the provisions of law creating it. Hence, if under the law of New York (which is set forth in Tillman's petition at pp. 8 and 9), and as this petitioner contends, the prior attachment of Equitable Trust Company for $500,000 and the subsequent attachments of Herbert J. Grant for $537,515.80, Jesse C. Millard for $2,000,000 and of the Estate of Serge Friede for $800,000 (R. 1658)* all existing on November 16, 1933, enured for the benefit of Tillman's attachment, whether or not it was inadvertently vacated on November 16, 1933, and thereafter reinstated, the Government took its assignment on that date, subject to Tillman's attachment as "a pre-existing infirmity" (*Guaranty Trust Co.* v. *U. S.*, 304 U. S. 126, 142).

If the Government took the Litvinov assignment to the New York funds of the Russo-Asiatic Bank, subject to the then existing attachments of Equitable Trust Company, Herbert J. Grant, Jesse C. Millard and the Estate of Serge Friede, and under New York law, the New York City Sheriff held the funds under said attachments for the benefit of Tillman, then Tillman, an American citizen, had a property right lawfully acquired under New York

---

* The references are to the record under Numbers 239, 240, 245, tried on the same record with Number 237, and filed with the petitions in said applications.

law prior to November 16, 1933, and could not be deprived of that property right without violating the Fifth Amendment to the Federal Constitution.

Moreover, Tillman's property right referred to the property within the continental United States, and was clearly covered by the provisions of the Federal Constitution. It is idle to say that his claim arose from his transactions with the Russo-Asiatic Bank in Russia. All the funds of the Russo-Asiatic in New York came from the transactions of the Russo-Asiatic Bank in Russia. The Russo-Asiatic Bank was not domiciled in New York, never had an office in New York, and the Guaranty Trust Company was merely a New York correspondent bank of the Russo-Asiatic.

While technically the designation of Tillman's judgment as "a default" judgment is correct, the undisputed facts show that Tillman's claims prior to their remand to the State Court for lack of jurisdiction (*Tillman* v. *Russo-Asiatic Bank,* 51 Fed. (2) 1023, cert. den. 285 U. S. 539), had three trials on the merits in the United States District Court for the Eastern District of New York. One trial was before the District Judge of the equitable defenses of the Russo-Asiatic Bank, which were dismissed on the merits. The other two trials were of Tillman's claims themselves before a jury. Both trials resulted in verdicts in favor of Tillman, the jury bringing the verdict for the full amount of the claims on the second trial (R.767-71).

We submit that Tillman's claims stood up well against the test by trial at the time the Russo-Asiatic Bank was represented in Court by one of the leading and ablest law firms in New York: Messrs. Evarts, Choate, Sherman and Leon.

Still more trivial and groundless objection of the respondents is that based on the decision of New York

courts that the statutory remedy to enforce the attachment of Tillman, provided by Sections 922 and 943 of New York Civil Practice Act, was barred to Tillman by New York Statute of Limitations (*Tillman* v. *National City Bank and Guaranty Trust Company,* 276 N. Y. 663).

The New York Court of Appeals did not vacate Tillman's judgment and did not set aside his lien. It did not do so because the New York Statute (said Section 922) expressly provides that said statutory remedy is given to the Sheriff and the attaching creditor in addition to the common law remedies to enforce the attachment lien, the section reading that:

> "* * * the Sheriff, in aid of such attachment, also may maintain any other action against the attachment debtor and any other person or persons or against any other person or persons which may be maintained by a judgment creditor in equity. * * *"

Tillman's cross-claim against the Guaranty Trust Company herein is such judgment debtor's bill in equity (R. 88-134). Furthermore, the law of New York is well settled that the doctrine of dormancy does not apply to attachment, and the lapse of time does not destroy a lien once lawfully acquired. It is further the law of New York, that the expiration of the period of limitations for a statutory remedy to recover a debt does not impair the lien itself on property, either personal or real (*House* v. *Carr,* 185 N. Y. 453; *Hulbert* v. *Clark,* 128 N. Y. 295 where the New York Court of Appeals followed the decisions of this Court in *Hardin* v. *Boyd,* 118 U. S. 756, and *Lewis* v. *Hawkins,* 23 Wall. 119); *Riordan* v. *Ferguson,* 147 Fed. (2d) 983; *McCarthy* v. *Farley,* 149 Misc. (N. Y.) 360.

It is respectfully submitted therefore, that this petitioner's claim plainly presents substantial and important questions for review of this Court, because this petitioner,

at all material times had a valid attachment lien under New York law in the New York assets of Russo-Asiatic Bank, pre-existing the Litvinov assignment. Thus, the decision below deprived Tillman, an American citizen, of his property rights under the Fifth Amendment to the Federal Constitution, and denied him the enforcement of his existing state judgment under "Full Faith and Credit" Clause thereof.

Respectfully submitted,

Borris M. Komar,
Counsel for Petitioner.

Dated, N. Y., September 15, 1947.